IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2006

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THE HON'BLE MR.JUSTICE P.JYOTHIMANI

Writ Petition No.2465 of 1998

P.Chockalingam

.. Petitioner

Vs.

1. The Presiding Officer,
   Labour Court,
   Salem.

2. Indian Oil Corporation Ltd.,
   LPG Bottling Plant,
   Karrupur, Salem.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, calling for the records from the first respondent relating to the award passed in I.D.No.267 of 1992 dated 21st May 1996 and quash the same and consequently reinstate the petitioner back in service with continuity of service, back wages and attendant benefits.

For petitioner : Mr.Narayanamoorthy
For respondent : Mr.T.S.Gopalan & Co. for R2

O R D E R

This writ petition is filed challenging the award passed by the Labour Court, Salem, in I.D.No.267 of 1992, dated 21.05.1998 and for a consequential reinstatement of the petitioner with continuity of service and back wages with attendant benefits.

2. The case of the petitioner is that he joined in the Indian Oil Corporation/the Second respondent as Khalasi on 08.12.1983. A charge memo was issued against him on 11.09.1986 to the effect that the petitioner has given false information regarding his date of birth and age and cheated the Corporation by submitting a forged document while entering into service.

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3. According to the charge, on scrutinizing the records, it was found that the petitioner has claimed to have studied upto VIII standard in the Government High School, Santhavasal, North Arcot District, and his date of birth was 17.03.1959. However, on verification from the school authority it was found that the petitioner has never studied in the school and submitted a forged certificate.

4. It was also further charged that on investigation it was revealed that the petitioner has studied in Elengo Middle School, Kesavapuram, North Arcot District, till 09.06.1978 and the date of birth recorded in various registers in respect of the petitioner was 10.04.1958. One of the conditions at the time of appointment of the petitioner was that the persons should be below the age limit of 25 years and it is for the purpose of securing employment, the petitioner has given his date of birth by declaration as 17.03.1959, which was found to be false.

5. The case of the petitioner is that when he was away on earn leave, an ex-party enquiry was conducted on 06.05.1987. However, when the petitioner approached the Enquiry Officer on 06.05.1987, without giving opportunity to the petitioner, the Enquiry Officer examined the witnesses and based on written statement given to the Vigilance Officer without even furnishing such copy to the petitioner, as concluding the enquiry, and held as if, the charges are proved.

6. In the Labour Court, before the first respondent the petitioner has raised the said point and having found that domestic enquiry was not properly conducted, the Labour Court, which while allowing the said contention of the petitioner, has directed the second respondent to lead evidence and prove the charges. Accordingly, the second respondent has examined three witnesses, out of whom M.W-1 was the retired Headmaster, who has not produced any material as per the petitioner.

7. It is the case of the petitioner that the second witness on the side of the Management namely M.W.2 was not employed in the school at the relevant point of time. The other witness of the Management namely M.W.3 who has admitted that the petitioner has studied in the Elengo Middle School, has clearly stated that he has recorded the date of birth only on assumption and not based on any documents or certificates. The M.W.3 has also stated that the date of birth entered in the Transfer Certificate in the Elengo Middle School was not correct.

8. The case of the petitioner is that he approached the Sub-registrar of Birth and Death and obtained a certificate and marked the same, when he was examined as a witness. It is also the case of the petitioner that even the witness examined on the side of the

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Management namely M.W.2 has stated that Ex.M.20, which is the Transfer Certificate issued by the Elengo Middle School is only approximate and entry contained therein cannot be stated to be correct date of birth of the petitioner.

9. According to the petitioner, the Labour Court has dismissed the I.D. holding that the removal of the petitioner is valid in law, however, directing the payment of Rs.10,000/- as a compassionate amount to the petitioner. The award is assailed by the petitioner on various grounds including that in spite of the categoric evidence of M.W.3 as well as M.W.2 stating that Ex.M.20, which is the certificate issued by the Elengo Middle School, which is the basis for the charge itself, was entered based on assumption and this aspect has not been considered. It is also the case of the petitioner that the Labour Court having held that the birth certificate filed by the petitioner dated 07.11.1995 marked as Ex.W.10 was not established to be bogus one but concluded on the basis that Ex.M.19, which is the Transfer Certificate issued by the Elengo Middle School dated 14.07.1973 that the petitioner has given false date of birth and held that the petitioner has cheated the second respondent employer. According to the petitioner, the finding of the Labour Court is perverse and therefore, liable to be set aside.

10. The second respondent has filed a counter affidavit. According to the second respondent, the petitioner was one among the persons sponsored by Employment Exchange and he was appointed as Khalasi on 08.12.1983 and at the time of the appointment, the petitioner has given a written declaration in a printed form declaring his date of birth as 17.03.1959 and that he has studied in Government High School, Santhavasal, upto VIII standard having joined in 1965. While it is true that the petitioner was issued charge sheet on 11.09.1986, the second respondent would submit that the petitioner was not willing to cross examine the witnesses and therefore, the enquiry was adjourned to various dates namely on 07.03.1987 to 08.03.1987 and ultimately, the enquiry was posted to 05.05.1987 on which date the petitioner was absent. It was based on the finding of the enquiry committee, the second respondent has issued a second show cause notice on 29.06.1987 proposing to impose punishment of dismissal to which the petitioner has given his representation on 14.08.1987, submitting that the punishment was severe. It was after considering the representation the final order was passed on 18.08.1987 dismissing the petitioner. It was as against the said order, the petitioner has raised a dispute under Section 2(A)(ii) of the Industrial Disputes Act, and originally it was posted to Labour Court, Coimbatore, as I.D.No.268 of 1990 and after constitution of the Labour Court, Salem, the same was transferred and renumbered as I.D.No.267 of 1992. The first respondent has decided the preliminary issue that the domestic enquiry was opposed the principles of natural justice and it was

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thereafter, the second respondent has examined three witnesses. It was in the Labour Court, the previous Headmaster of the Government High School, Sandavasal, was examined as M.W.1, who has stated that the petitioner has never studied in the said school and no certificate was not issued by the school and the signature is not of his.

11. It is also the case of the second respondent that and another witness namely M.W.3 who was the Headmaster of the Elengo Middle School, deposed that he has issued a certificate to the petitioner on 09.06.1972. The certificate states describing the petitioner's father as Parasuraman and his date of birth as 10.04.1958. The said witness has also stated that one P.Chokalingam, S/o Parasurama Gounder discontinued his education on 09.06.1972. It is also his evidence that in cases where any student at that time of admission was unable to tell his actual date of birth, he is presumed to have completed 5 years of age if he is able to touch his left ear with his right hand and approximate date of birth will be recorded based on that.

12. Therefore, according to the second respondent, the said M.W.3 who has entered the date of birth of the petitioner as 10.04.1958 in Ex.M.19 and therefore by the method followed by the M.W.3 in entering the date of birth, the same connotes the correct procedure and by applying that, the declaration given by the petitioner at the time of joining under the second respondent stating his date of birth as 17.03.1959 becomes a false statement, given only for the purpose of procuring the job.

13. According to the second respondent, it was only after appreciating all the evidence and factual position, the first respondent/Labour Court has found that the date of birth given by the petitioner as 17.03.1959 as if he studied in the Government School, Santhavasal, is not genuine and the recording of the date of birth as 10.04.1958 under Ex.M.19 placing reliance on the evidence of M.W.3 can only be the correct method and on that basis the award was passed, rejecting the claim of the petitioner, however, on compassionate ground directing the payment of Rs.10,000/- which is perfectly in order.

14. It is also the case of the second respondent that even though the second respondent has taken the stand that the first respondent is not competent court, since the state Government is not the Competent Authority, the second respondent has not chosen to challenge the award, since the Labour Court has not directed reinstatement and the second respondent is entitled to canvas the correctness of the said finding in this proceedings as per the judgment of the Hon'ble Apex Court reported in 1993(1) SCC 553 and 2003(5) SCC 521. The second respondent also would rely upon the first schedule of the Industries (Development and Regulation) Act,

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1951, under which the second respondent industry comes as a controlled industry, under the control of the Central Government. The appropriate Government in respect of the dispute is the Central Government and therefore the first respondent has no jurisdiction. The second respondent would also state that Section 2(A)(ii) of the Industrial Disputes Act, was introduced by way of amendment by the Tamil Nadu Act 05.01.1988 and will be applicable only in respect of adjudication of a dispute by the Labour Court in which the State Government is appropriate Government. Therefore, according to the second respondent, the first respondent/Labour Court, Salem is not competent Court to decide the issue.

15. The learned counsel for the petitioner Mr.Narayanamoorthy would submit that the Labour Court has proceeded on the basis of the evidence of M.W.3 stated to have been Headmaster of the Elengo Middle School. A perusal of the evidence of the M.W.3 would categorically show that the entry made in the Transfer Certificate in which the petitioner's date of birth was stated as 10.04.1958, was not based on the real factual position, since the date of birth of the petitioner, as seen in the Ex.W.10 which is a birth certificate issued by the competent authority wherein the date of birth of the petitioner is correctly stated as 29.01.1959. As admitted by M.W.3 himself, in the Elengo Middle School the date of birth was entered as 10.04.1958 only on the basis that the petitioner was asked to touch his left ear with his right hand and based on that a conclusion was arrived at to the effect that he has completed 5 years of age and on assumption the date of birth was entered as stated above and that can never be a rational basis for the purpose of deciding the date of birth according to the learned counsel for the petitioner. Therefore, the conclusion arrived at by the Labour Court based on the evidence of M.W.3 as state above can only be treated as perverse.

16. According to the learned counsel for the petitioner, even assuming that as stated by M.W.3 that the petitioner's date of birth was entered in the Elengo Middle School, Kesavapuram, as 10.04.1958, the Labour Court has failed to appreciate Ex.W.10, which is the certificate issued by the competent authority in which the date of birth of the petitioner has correctly given as 31.01.1959 and this aspect has not been considered by the Labour Court at all.

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17. According to the learned counsel for the petitioner, in respect of the activity of the second respondent, there are two stages one is refinery which is in the manufacturing stage and another one is marketing. It is only in respect of manufacturing of the oil or gas the same can be covered under the Central Government control. After the manufacturing is over and the oil or gas is filled up in a big tanks, sent to various stages for the purpose of distribution, it is at the marketing state and

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therefore, it is in each and every state territory such marketing is being done and therefore, it cannot be said that the Labour Court/the first respondent has no jurisdiction.

18. On the other hand, the learned counsel for the second respondent, while placing reliance on the judgment of the Hon'ble Apex Court reported in 1993(1) SCC 553 and 2003(5) SCC 321 has contended that even though the second respondent has not chosen to challenge the award by filing an independent writ petition, he is entitled to raise the dispute regarding the award including the maintainability in this writ petition. There was no occasion for the second respondent to file a separate and independent writ petition for the reason that the Labour Court has not directed to reinstate of the petitioner. In any event, based on the above said judgments of the Hon'ble Apex Court, the learned counsel would contend that the first respondent has no jurisdiction to decide the issue, since the control of the second respondent is not with the State Government and it is in the Central Government and therefore, the first respondent has no jurisdiction to decide the issue.

19. The learned counsel for the second respondent also would submit that in this case, based on the evidence of M.W.3 and also M.W.1 who has categorically stated that the petitioner has not studied in the Government School, Santhavasal, at all and therefore, a bogus certificate has been obtained to show as if the petitioner date of birth was 17.03.1959 and based on that a declaration was given by him and he has procured the employment under the second respondent and therefore, this should be treated as a case of suppression of material fact and such person who has procured employment on suppression of material fact is not entitled for employment. For that proposition the learned counsel for the second respondent also would rely upon the judgment of the Hon'ble Apex Court reported in 2005(7) SCC 177.

20. I have heard the learned counsel for the petitioner as also the learned counsel who is appearing for the second respondent and perused the entire records.

21. Admittedly, in this case at the time when the petitioner has entered into service under the second respondent, he has declared his date of birth as 17.03.1959 stating that he has studied in the Government High School, Santhavasal, upto VIII standard, having joined in the school in 1965 and he has also given declaration at the time of his employment under the second respondent which was on 08.12.1983 stating his date of birth as 17.03.1959.

22. It is also not in dispute that as per the rules governing the appointment under the second respondent at that time, a person

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seeking appointment should be below 25 years of age. It is also not in dispute that if the petitioner's date of birth is 10.04.1958 as stated by the second respondent, at the time of his appointment under the second respondent on 08.12.1983, the petitioner would not have been eligible to be appointed. Therefore, it is clear that the appointment was given to the petitioner by the second respondent on the basis that the date of birth of the petitioner was 17.03.1959. However, the charge which has been framed against the petitioner is that the second respondent after enquiry found that the petitioner has not studied in the Government High School, Santhavasal, at all. But on the other hand there were records in Elengo Middle School, Kesavapuram, wherein the petitioner presumed to have studied and in the certificates maintained by the said school his date of birth has entered as 10.04.1958 and therefore, the charge framed by the second respondent was that the petitioner has given false information about his date of birth for the purpose of procuring appointment under the second respondent.

23. One other fact which is relevant is that admittedly, the domestic enquiry conducted by the second respondent was ex-parte and therefore the Labour Court has decided as a preliminary issue that the domestic enquiry was against the principles of natural justice, however, directed the second respondent to adduce evidence to prove the charges and it is in furtherance of the direction given by the Labour Court, in fact the second respondent has let in evidence including examining three witnesses. Reliance is placed on the first witness namely M.W.1 stated to have been the former Headmaster of the Government High School, Santhavasal, which is state to be the school wherein the petitioner has studied upto VIII standard. No doubt the said witness has given evidence stating that the birth certificate stated to have been issued by the said school was not one issued by the said school. The said fact has also been confirmed by M.W.2 who was working as Assistant Headmaster in the said school at Santhavasal. It is seen that the other witness examined on behalf of the Management namely M.W.3. While speaking about the Ex.M.19 namely the Transfer Certificate, the said witness would state that the date of birth of the petitioner was given as 10.04.1958 not on any real material but on presumption namely by directing the petitioner as a student to touch his left ear by his right hand. It was based on the said conduct which was in practice, there was a conclusion that the petitioner has completed 5 years and on that basis the approximate date of birth was fixed and accordingly, under Ex.M.19, the approximate date of birth of the petitioner was fixed as 10.04.1958. The evidence of M.W.3 also categorically shows that he cannot confirm that the date of birth given to the petitioner as 10.04.1958 would have been the correct date of birth. This is on the basis of the above said evidence the Labour Court has proceeded to decide the issue.

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24. The Labour Court has considered Ex.M.19 which is a certificate stated to have been issued by the Elengo Middle School, Kesavapuram, stating that the date of birth of the petitioner as 10.04.1958, which has been supported by the evidence of M.W.3. On the basis that if the contents of Ex.M.19 and M.20 which is also a certificate from the Elengo Middle School in respect of date of birth of the petitioner is correct, the contentions of the Management can be accepted.

25. The Labour Court has also considered that Ex.W.10 which is a birth certificate issued by the authorities competent under the Birth and Death Registration Act, and the said document was marked by consent, in which the petitioner's father's name and mother's name namely Parasuraman and Kannammal have been mentioned stating the date of birth of the male child as 29.01.1959. A reference to the order of the Labour Court would also show that the Labour Court has categorically come to a conclusion that there was no dispute raised on behalf of the Management also regarding the genuiness of Ex.W.10. The Labour Court has also given a finding that if the date of birth given under Ex.W.10 is accepted which is taking into consideration namely 29.01.1959, the petitioner would have been less than 25 years, at the time of his procuring his employment under the second respondent. Having given such a finding the Labour Court has rejected the claim of the petitioner on the ground that it is proved that as per Ex.M.19 the petitioenr has given a false certificate and therefore, the first charge framed against the petitioner that the petitioner has given a false declaration was considered to have been proved, especially, in the circumstance that by virtue of Ex.W.10 the petitioner has chosen to given a third date of birth to him as 29.01.1959, but at the same time, concluding that it cannot be decided that the petitioner has given it for the purpose of procuring employment under the second respondent and cheated the second respondent.

26. On the other hand, the Labour Court appeared to have come to a conclusion in rejecting the claim of the petitioner not on the ground that the petitioner has produced a false certificate for the purpose of procuring employment because under Ex.W.10 which is an authenticated record which is also marked by consent, the date of birth of the petitioner is 29.01.1959. Therefore, there was no necessity for the petitioner to give a false declaration for the purpose of procuring the job.

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27. On the other hand, the petitioner has nevertheless produced a declaration stating his date of birth as 17.03.1959, which is not correct and therefore, even though it is not willful, it remains the fact that the petitioner has given a false declaration at the time when he entered into the job under the second respondent. It was on that basis the Labour Court has

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rejected the claim of the petitioner and uphold the decision of the second respondent in dismissing the petitioner from service.

28. Irrespective of the validity or otherwise of the method stated to have been followed by M.W.3 for the purpose of arriving at a decision regarding the date of birth of the petitioner as 10.04.1958 which according to my considered view can never be encouraged as a proper method of arriving at the date of birth of a person, as correctly pointed out by the Labour Court, the question to be considered in this case in respect of the charge framed against the petitioner is as to whether the petitioner has given false information regarding his date of birth and age or not? A reference to the evidence of M.W.1 and M.W.2 would show that the petitioner has not even studied in the Government High School, Santhavasal and in my considered view, the evidence of M.W.1 is unimpeachable and it is not even the case of the petitioner while cross examining the M.W.1 that the petitioner has in fact studied in the Government High Shool, Santhavasal. Therefore, it remains the fact that the petitioner at the time of entry into service under the second respondent namely on 08.12.1983, has certainly attempted to produce some certificates knowing fully well that he has not studied in the Government High School, Santhavasal and one can reasonably presume that the eagerness on the part of the petitioner is at that time to get employment some how or other.

29. In this regard, it is relevant to point out that even Ex.W.10 was procured by the petitioner long after the filing of the I.D. and that cannot make his original intention at the time of his joining service under the second respondent on 08.12.1983 as one with good and bonafide intention. It is in this regard the judgment of the Hon'ble Apex Court relied upon by the learned counsel for the second respondent in A.P.Public Service Commission Vs. Koneti Venkateswarulu and others reported in 2005 (7) SCC 177 is relevant. The Hon'ble Apex Court in that case having found that an employee has deliberately suppressed a material fact in respect of a relevant information and therefore, the employment was subsequently cancelled by the Authority holding that such cancellation is perfectly valid on the basis that a person who indulges in suppression of material fact is deemed to have suggested a false fact and does not deserves public employment. The Hon'ble Apex Court while considering the facts and circumstances of the case as held as follows:

> "7. We are unable to accept the contention of the learned counsel for the first respondent. As to the purpose for which the information is called for, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment

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particulars Vide column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the first respondent to leave the particulars in column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.07.1999, the examination was held on 24.10.1999, and the interview call was given on 31.01.2000. At no point of time did the first respondent inform the appellant Commissioner that there was a bona fide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant Commissioner discovered by itself that there was suppressio veri and suggestio falsi on the part of the first respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya Sangathan and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view."

30. By applying the ratio laid down by the Hon'ble Apex Court, I have no hesitation to come to the conclusion that on the fact and circumstances of the present case, especially, when the petitioner has never raised his voice stating that he has given his date of birth wrongly and it was not even the case of the petitioner that he came to know about his date of birth as 29.01.1959 only after he has obtained Ex.W.10, I am of the considered view that this is the case wherein "suppressio veri suggestio falsi" applies. In respect of the jurisdiction issue the Labour Court has considered Ex.M.21 to M.28 to come to the conclusion that Indian Oil Corporation is not defined under the controlled industry as per the Industries Development Regulation Act.

31. In any event as correctly pointed out by the learned counsel for the petitioner, admittedly, the manufacturing process of the second respondent is not done within the jurisdiction of the first respondent but the marketing process is done within the jurisdiction and therefore, I do not think there is any valid substance in that regard raised by the second respondent about the jurisdiction issue.

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In view of the above facts, the writ petition fails and the same is dismissed confirming the award passed by the Labour Court and considering the circumstances of the case there will no order as to the cost.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

To

1. The Presiding Officer,
   Labour Court,
   Salem.

2. Indian Oil Corporation Ltd.,
   LPG Bottling Plant,
   Karrupur, Salem.

1 cc to M/s. T.S. Gopalan & Co, Advocate, Sr. 48891

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